Environmental insurance is an important risk management tool used in connection with the purchase, sale, financing, and development of sites with known or potential historic contamination, and in connection with ongoing manufacturing operations that involve historic contamination or have the potential to cause future contamination. It can frequently assist the parties to a transaction to bridge the "risk gap" in circumstances where due diligence and standard contract indemnities and representations are inadequate. It is also used in managing the environmental risks associated with ongoing operations at businesses that handle hazardous substances or other potentially polluting materials.

The most common form of environmental insurance, pollution legal liability coverage, can provide insureds with coverage for on-site and off-site cleanup costs and third party claims for bodily injury and property damage arising from existing and new pollution conditions. As such, our real estate developer clients frequently look to this coverage as a means to manage the risks associated with historic contamination at brownfield properties they acquire to redevelop. In addition, clients with ongoing operations acquire this type of coverage to insure against the possibility of new pollution associated with their business activities.

A second type of environmental insurance, remediation cost cap coverage, can play an important role in managing the risk of unexpected cost overruns for the cleanup of known conditions. Such costs may arise from higher than expected remediation expenses, regulatory changes, or the discovery of new or more contamination.

Lenders often look to lender environmental coverage (or inclusion as an additional insured on the borrower’s pollution legal liability coverage) to address lender concerns such as protecting the value of their security interests and providing the lender itself with coverage against contamination claims. Many brownfield transactions cannot be financed without such lender pollution liability coverage.

In addition, various combinations of pollution legal liability, remediation cost cap, and lender liability policies may be tailored to specific circumstances. For example, finite risk coverage is a specialized insurance product through which the insured pays the carrier the present value of the estimated cleanup cost for known conditions, along with a risk premium for liability coverage and cost overruns. In return, the carrier assumes responsibility for the expected cleanup cost, cost overruns, and unknown conditions.

Our attorneys regularly deal with several environmental specialty insurance brokers and all of the major carriers who provide these types of coverages. We assist clients in identifying the appropriate insurance products to facilitate a particular transaction or protect an ongoing business, evaluating quotes provided by carriers, and negotiating appropriate policy and endorsement language to enhance the terms of the policies.

Related Areas
Site Development and Brownfield Redevelopment
- Endangered Species
- Environmental Due Diligence in Site Development and Brownfield Transactions
- Environmental Insurance
- Financial Assistance
- Historic and Archaeological Resources
- Lender Liability and Financing Issues
- Sewage Facilities
Superfund and Site Remediation
- Contaminated Sediment Sites
- Federal Cleanup Programs
- State Cleanup Programs

Practice Contacts
Rodd Bender  
T: 484-430-2317  
rbender@mankogold.com

Brenda Gotanda, LEED AP  
T: 484-430-2327  
bgotanda@mankogold.com

John Gullace  
T: 484-430-2326  
jgullace@mankogold.com

Jill Hyman Kaplan  
T: 484-430-2315  
jkaplan@mankogold.com

Bruce Katcher  
T: 484-430-2320  
bkatcher@mankogold.com

Jonathan Spergel  
T: 484-430-2309
the policies and fit site and deal conditions.

Finally, environmental coverage may sometimes be available under older forms of comprehensive general liability policies issued before the various pollution exclusions were instituted. We assist clients in making claims and recovering under those policies, as well as under current environmental insurance policies, and have successfully litigated these claims as described on our insurance litigation practice page.

REPRESENTATIVE EXPERIENCE

The following are examples of representative matters our lawyers have handled for clients who need to place various forms of environmental liability coverage:

- Assisted a developer client in selecting an insurance carrier and negotiating the terms of pollution legal liability and contractors pollution liability policies to manage environmental risks for itself and the municipality in the mixed-use redevelopment of approximately 363 acres in the New Jersey Pinelands. The project includes remediation of buried demolition debris, as well as closure and post-closure monitoring of a former municipal landfill.

- Represented another developer, who aggregated multiple former industrial sites to develop a transit village mixed use project, in securing pollution legal liability policies for each parcel to help manage its risks and those of the investors and lenders involved in the project. We assisted the client in guiding the underwriters through multiple environmental reports for the project, and in negotiating the terms of the endorsements to these policies.

- Represented a Fortune 100 company in negotiating the terms of an environmental insurance policy, with multi-million dollar policy premiums, covering environmental liabilities arising from known and unknown environmental conditions at all divested properties. This included negotiating expanded coverage language to apply to “threatened” releases in addition to “actual” releases, extending coverage to apply to medical monitoring and emotional distress claims and claims for “stigma” damages to property, and expanding the insurer’s obligation to defend environmental claims.

- Secured environmental insurance for a client constructing a new residential development on a brownfield adjacent to, and impacted by groundwater from, a neighboring Superfund Site. Policy coverages addressed potential claims for natural resource damages, diminution in property value, remediation of

jspergel@mankogold.com
Matthew Sullivan
T: 484-430-2305
msullivan@mankogold.com
Neil Witkes
T: 484-430-2314
nwitkes@mankogold.com
unknown conditions, third party bodily injury and property damage, and construction delays related to site conditions.

- Negotiated policy language and endorsements for a global manufacturer of batteries seeking coverage on a global basis for known and unknown pollution conditions that currently exist and that may arise in the future.

**PRESS RELEASES**

MGKF Partner John Gullace Panelist on “Allocating CERCLA Liability” Webinar
May 25, 2017

MGKF Presents at Pennsylvania Bar Institute's 18th Annual Real Estate Institute
December 11, 2014

Borrelli Addresses "All Appropriate Inquiry" for the Society of Women Environmental Professionals
November 13, 2014

**SEMINARS & SPEAKING ENGAGEMENTS**

Allocating CERCLA Liability
June 6, 2017
a Strafford live webinar: 1:00 - 2:30 p.m. EDT

2015 ICSC Cocktails & Conversation
September 9, 2015
CO-HOSTED BY MANKO, GOLD, KATCHER & FOX AND BL COMPANIES
Bank & Bourbon's Whiskey Room, Loews Philadelphia Hotel

ICSC Cocktails & Conversation
September 9, 2014
Co-Hosted by Manko, Gold, Katcher & Fox and BL Companies
Philadelphia Marriott Downtown: Meeting Rooms 309-310

**MEDIA COVERAGE**

Brownfields Law and Practice: The Cleanup and Redevelopment of Contaminated Land
October 1, 2013
Pennsylvania State Chapter
Published by Matthew Bender
SPECIAL ALERTS

Changes in Federal Toxicity Values Prompts New Jersey to Revise Soil Remediation Standards; Other States Will Follow
September 21, 2017

ASTM Issues Revised Phase I Environmental Site Assessment Standard
November 11, 2013

EPA Publishes Proposed Amendment to All Appropriate Inquiry Rule: Significant Environmental Due Diligence Changes on the Horizon
August 20, 2013

Environmental Considerations for Superstorm Sandy Recovery
November 7, 2012

Permit Extension Act Breaths New Life Into Pennsylvania Environmental Approvals
July 14, 2010

ARTICLES

An Environmental Rights Amendment for NJ: Panacea or Portent?
November 21, 2018
New Jersey Law Journal

Pennsylvania Commonwealth Court Finds Latent Property Contamination Triggers “Occurrence” Insurance Coverage Prior to Discovery of the Contamination
May 1, 2017
MGKF Litigation Blog

Communications With A Consultant, Even If Not Privileged, May Be Protected
April 24, 2017
MGKF Litigation Blog

New York Court Awards $1.7 Million in Litigation Costs to Insured for CERCLA Defense
December 15, 2016
MGKF Litigation Blog

Reducing Future Air Emissions Can Be Covered by an Environmental Insurance Policy
August 11, 2015
MGKF Litigation Blog

Revised ASTM Phase 1 Site Assessment Standard Issued
November 8, 2013
The Legal Intelligencer